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Most of Westmoreland Jury Seemed to Favor CBS, but Doubts Remained

By MAUREEN DOWD

Judge Pierre N. Leval dismissed the jury yesterday in Gen. William C. Westmoreland's \$120 million libel suit against CBS, saying "it may be for the best that the verdict will be left to history."

Within minutes, the courtroom took on the air of a cocktail party. Although the 12 men and women would never deliver a verdict, they eagerly delivered their opinions in a coda as extraordinary as the case itself.

In one corner was Myron Gold, an accountant from Muncie, N.Y., lecturing an attentive Mike Wallace about the responsibilities of the press.

A few feet away, the jury foreman, Richard Benveniste of the Bronx, was beaming as General Westmoreland shook his hand and told him he had "shown good leadership."

'I Was 50-50'

"I was 50-50 at this point," the 34-year-old insurance underwriter told the general. "I could have rationalized it

either way. I'm in business. I understand these things."

As the jurors related their impressions, it was clear that they had conflicting views of the lawsuit that charged that CBS had defamed the general in its 1982 documentary "The Uncounted Enemy: A Vietnam Deception." General Westmoreland dropped his suit Monday after he and CBS agreed on a joint statement.

The majority of the jury was siding with CBS and seemed unconvinced that the network had acted carelessly in producing its program for CBS Reports. But they appeared equally unconvinced of its thesis that General Westmoreland was engaged in a conspiracy to deceive President Johnson and other superiors.

"I have a hunch he might have come away with more than he settled for," said Mr. Gold, who sought out the general in the crowded third-floor room in Federal District Court on Foley Square to clasp his hand. "Thank God for careerists like you who are willing to give a lifetime to your country," he told

him. "It was a tough job and an unpopular war and you can do no right in cases like that."

Mr. Gold, who took 400 pages of notes with cross-references, was not alone among the jurors in expressing puzzlement about why the general had dropped his suit a week before they were expected to begin deliberations. Although they agreed that CBS had presented strong witnesses last week, they did not feel the testimony had become so lopsided that the general should have given up.

General Westmoreland, relaxed and smiling and surrounded by jurors who wanted to meet him and get his autograph, was asked if he had any regrets.

"No," he murmured, grinning. Both sides were happy with the ending, or at least seemed to be. "The best kind of bargain is the kind both sides go away happy with," said David Boies, the lawyer for CBS. "The second best kind of bargain is the kind both sides go away saying they're happy with."

General Westmoreland, accompanied by his wife, Kitsy, shook hands with Mr. Wallace, the program's narrator, and George Crile, the producer, both of whom were defendants, along with Samuel A. Adams, a former Central Intelligence Agency analyst who was a paid consultant to CBS in the preparation of the disputed documentary.

Jurors Are Thanked

Mr. Crile carried his 7-year-old daughter in his arms as he and Mr. Wallace, both looking delighted, walked around the room to thank jurors.

Cheryl Raymond, an alternate, said she and two other jurors had recently gone to lunch and conducted "a little head count." "We figured seven or eight were leaning toward CBS," she said, adding that the others were either undecided or leaning toward the general.

The only juror who seemed to believe that CBS had acted with reckless disregard for the truth — an element necessary to a finding of libel in a case involving a public figure such as General Westmoreland — was Michael Sussman, a 42-year-old accountant from Manhattan. "It was reckless disregard for the truth," he said. But, he added: "What is the truth?"

Nearly everyone agreed that the general had helped himself in his testimony, and Mr. Benveniste expressed the mood of respect when he said, "We were trying to look out for him as best we could."

But several other jurors said that CBS would have emerged victorious.

'Much More Damaging'

"I thought that everything that came out in court was much more damaging than the documentary ever was," said M. Patricia Roth, 43, an art teacher from Westchester County.

But Mrs. Roth and others were not prepared to support CBS's contention that the general had been deliberately deceitful.

"He was doing the best he could,"

said Mrs. Roth, echoing the point made by others that intelligence reporting was not always General Westmoreland's primary concern during the war in Vietnam. "He was relying on his subordinates. He was totally tunnel-visioned and misinformed."

The jurors conceded that they were confused by much of the military and legal terminology.

'They Were All Over the Place'

"I looked up malice and libel and conspiracy in my Webster's dictionary," said Mr. Benveniste. He said he even did some research on the enemy strength, consulting a friend who had served in Vietnam under General Westmoreland. "He said you didn't know who was out there," the juror said. "They were all over the place."

Several jurors said that when General Westmoreland was testifying, they thought he would prevail. But the tide shifted as Col. Gains Hawkins and Maj. Gen. Joseph A. McChristian, subordinates of General Westmoreland in Vietnam, testified against him.

But the jurors said they had tried to hold their judgments in abeyance, and not allow themselves to be swayed by the latest testimony.

The jurors exchanged telephone numbers yesterday before they went home, and talked of a reunion. They had decorated their small and narrow jury room with Expressionist posters, and at Christmas, construction-paper stockings. There was even one for the judge, labeled simply "Pierre."